

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NICHOLAS C. GEORGALIS,)	CASE NO. 1:06CV1183
)	
Plaintiff-Appellant,)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	<u>ORDER</u>
)	
UNITED STATES PATENT AND)	
TRADEMARK OFFICE,)	
Defendant-Appellee.)	

CHRISTOPHER A. BOYKO, J.:

Pursuant to the December 1, 2008 Mandate of the United States Court of Appeals for the Federal Circuit in Case No. 2008-1260, this Court's decision, granting summary judgment, was affirmed in part, vacated in part, and remanded in part, with instructions to dismiss Georgalis's claims challenging 35 U.S.C. § 41(b) for lack of jurisdiction.

In accordance with the appellate court's instructions, Plaintiff-Appellant's claims challenging 35 U.S.C. § 41(b) (governing expiration of patents for failure to pay maintenance fees) are time-barred because they were brought outside the six-year statute of limitations in 28 U.S.C. § 2401(a). This statute of limitations requires "every civil action commenced against the United States [to] be barred unless the complaint is filed within six years after the

right of action first accrues.” The parties agree Georgalis’s ‘967 patent expired in 1996, while his lawsuit was filed in 2006. Originally, this Court declined to address the statute of limitations issue, finding summary judgment was warranted on the merits. However, after that decision was entered, the Supreme Court ruled that statutes “limiting the scope of a governmental waiver of sovereign immunity” are jurisdictional in nature, and a court *must* address a jurisdictional statute of limitations. *John R. Sand & Gravel Co. v. United States*, 128 S.Ct. 750, 752-54 (2008).

Therefore, the decision granting summary judgment in favor of the United States Patent and Trademark Office on Georgalis’s claims that 35 U.S.C. § 41(c) is unconstitutional and effected a taking without just compensation is re-affirmed; the portion of the opinion granting summary judgment in favor of the United States Patent and Trademark Office on Georgalis’s claims that 35 U.S.C. § 41(b) is unconstitutional is vacated; and rather, those claims are dismissed for lack of jurisdiction.

IT IS SO ORDERED.

DATE: December 11, 2008

S/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge